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Please note:  
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If you have questions or comments, please contact Jim Schenkel at 415-553-4000, or email info@quojure.com.

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Attorney for Petitioner  
ELLEN BLOCK

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF CORINTH

In the Trust Matter of Case No. 54321  
HORACE BROWN TRUST dated POINTS & AUTHORITIES IN  
February 18, 2\_\_\_, SUPPORT OF BANK ACCOUNTS AS  
Deceased. TRUST ASSETS  
\_\_\_\_\_ /

**INTRODUCTION**

Horace Brown’s written reference to his trust in his will was sufficient corroboration of his oral declaration of trust over his bank accounts to allow it to be enforceable.

**FACTS**

In 2\_\_\_, Horace Brown created a revocable living trust. Schedule A of the Trust declared certain assets to be in the trust; the schedule was meant to be exemplary rather than exhaustive, and was meant only to ensure that the trust had enough assets to be funded. Alan Jones, the attorney who drew the trust, testified that he advises all of his clients to transfer any substantial bank accounts to their trusts.

The trust was restated in 2\_\_\_. Janice Lee, the attorney who drafted the document, asked him whether he had all of his assets titled in his name as trustee. Brown assured

1 her that he did. Lee reiterated that it is important that title be in his name with the word  
2 “trustee” following it so that the assets would not remain in his name at death, which  
3 might send them to probate. Brown reiterated that his titles were in that form.

4 At the same time, Brown executed a new will. That will stated:

5 Prior to signing this Will I established a revocable, living Trust. It is my  
6 intention to proceed to transfer virtually all of my property (of any kind) to  
7 that Trust in order to avoid probate. For this reason, I do not expect to own  
8 any property at my death over which this Will would have authority.

9 But when Brown died, two substantial bank accounts were still in his name, with  
10 no indication of a trust.

## 11 12 **ARGUMENT**

13 Creating an express trust requires a competent trustor, trust intent, trust property,  
14 trust purpose, and a beneficiary. *Estate of Heggstad* (1993) 16 Cal.App.4th 943, 947,  
15 citing Prob. Code §§ 15201-15205. Brown was a competent trustor and he showed his  
16 present intention to make a trust. He showed that all of his property was to be trust  
17 property, and the Trust’s 1998 Statement and 1999 Restatement showed both the trust  
18 purpose and the trust beneficiary. All of the elements of a trust are therefore present.

19 A person may create an *inter vivos* trust either by declaring the property to be in  
20 trust or by transferring property to another in trust. Prob. Code § 15207(a), (b). If a trust  
21 has been validly declared, there is no reason for an actual or constructive transfer. *Estate*  
22 *of Heggstad, supra*, 16 Cal.App.4th at 947-950. Thus ordinarily a statement that “I am  
23 holding these bonds in trust for A” is enough to create a trust over the bonds. *Id.* at 948,  
24 citing REST.2D, TRUSTS § 17, ill. 1.

25 Even though an oral transfer of personal property in trust will create a trust over it,  
26 a mere oral declaration of trust is not sufficient evidence of its creation. Prob. Code  
27 § 15207(b). Thus § 15207 requires some corroboration in the form of transfer,

1 earmarking, or written evidence. 18 Cal. Law Rev.Comm.Rep. (1986) at 525. “If the  
2 owner of shares of stock makes an oral declaration that he or she holds it in trust for his  
3 children, the trust would fail unless there was some written evidence of a transfer in  
4 trust.” *Ibid.*

5 Section 15207 does not state that oral trusts are invalid; it only requires some  
6 written corroboration of it. The will furnishes that written corroboration. It is settled that  
7 a reference to a trust in a will, even one that is later revoked or otherwise ineffective as a  
8 will, is a sufficient memorandum of the trust to satisfy the Statute of Frauds. Fratcher,  
9 SCOTT ON TRUSTS (4th ed. 1987) § 47, at 491; REST.2D, TRUSTS § 47. In the same way,  
10 the will in this case, which was never revoked, is a sufficient corroboration of trust over  
11 all of Brown’s property, including the bank accounts.

12 A trust may be proved by circumstantial evidence, so long as it is clear and  
13 convincing. *Fahrney v. Wilson* (1960) 180 Cal.App.2d 694, 697. In this case,  
14 circumstantial evidence shows the existence of the trust over the bank accounts. Attorney  
15 Jones advised Brown to put the bank accounts in the trust. As the will reflects, Brown  
16 intended all of his substantial property to be in the trust, including his bank accounts  
17 opened before the trust’s creation. Thus circumstantial evidence shows an intention to  
18 create a trust over the bank accounts.

## 19

## 20 CONCLUSION

21 The statement to attorney Lee that the trust contained the bank accounts was a  
22 sufficient declaration of the trust to create a trust over them. Even if it were not, the  
23 circumstantial evidence of an intent to create the trust is clear. The will corroborates his  
24 oral trust. The trust over the bank accounts is therefore enforceable.

25 Dated:

26 \_\_\_\_\_  
Attorney for Petitioner ELLEN BLOCK